

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BILL BENNETT

Plaintiff

and

HYDRO ONE INC., HYDRO ONE BRAMPTON NETWORKS INC.,  
HYDRO ONE REMOTE COMMUNITIES INC., NORFOLK POWER  
DISTRIBUTION INC. and HYDRO ONE NETWORKS INC.

Defendants

Proceedings under the *Class Proceedings Act*, 1992

**REPLY CERTIFICATION RECORD**  
**(RETURNABLE MAY 9-11, 2017)**

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# TAB 1

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :

BILL BENNETT

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- and -

HYDRO ONE INC., HYDRO ONE BRAMPTON NETWORKS INC., HYDRO ONE  
REMOTE COMMUNITIES INC., NORFOLK POWER DISTRIBUTION INC., and  
HYDRO ONE NETWORKS INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**REPLY AFFIDAVIT OF ERROL SORIANO**

(sworn December 2, 2016)

I, **Errol Soriano**, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a Managing Director at Duff and Phelps. As such, I have knowledge of the matters set out below. Where that knowledge is based on information obtained from others, I have so indicated and believe that information to be true.
2. I was retained by Koskie Minsky LLP and Lax O'Sullivan Lisus Gottlieb LLP, counsel for the proposed representative Plaintiff, to prepare a report regarding the availability of a reasonable methodology to calculate damages on an aggregate basis in respect of the claims asserted in this action. I have also prepared a report replying to the evidence filed by the Defendants. A copy of the reply report I have prepared is attached as **Exhibit "A"**.

3. I swear this affidavit in support of the proposed representative Plaintiff's motion for certification of this action as a class proceeding and for no other or improper purpose.

SWORN BEFORE ME at the City of  
Toronto, on December 2, 2016.



Commissioner for Taking Affidavits  
Garth Myers



ERROL SORIANO

This is Exhibit "A" referred to in the affidavit of Errol Soriano, sworn before this 2nd day of December, 2016



A Commissioner for Taking Affidavits

---

December 2, 2016

Koskie Minsky LLP  
20 Queen Street West  
Suite 900  
Toronto, ON  
M5H 3R3

Lax O'Sullivan Lisus Gottlieb LLP  
145 King St. West  
Suite 2750  
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Attention: Kirk Baert and Garth Myers

Attention: Eric Hoaken, Ian Matthews and  
Lisa Lutwak

**Re: Bennett v. Hydro One Inc. et al**

### Introduction

1. I have previously prepared a report in this matter dated April 13, 2016 (the "**First Soriano Report**") in which I set out what I consider to be a "... *reasonable methodology to calculate damages on an aggregate basis in respect of the claims asserted in this action without proof by individual class members.*"<sup>1</sup> My proposed calculation framework is outlined in paragraphs 22 to 25 in the First Soriano Report.
2. I understand that my report was included in the plaintiff's Motion Record submitted to the Court for the purposes of the motion for certification.
3. Subsequently, Hydro One has delivered their Responding Motion Record dated October 19, 2016 (the "**Responding Record**") which is comprised of:
  - a. the affidavit of Oded Hubert sworn October 19, 2016 (the "**Hubert Affidavit**");  
and
  - b. the affidavit of Vinita Juneja sworn October 20, 2016 (the "**Juneja Affidavit**").<sup>2,3</sup>
4. The Hubert Affidavit has not raised substantive issues with my assumptions or proposed framework.

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<sup>1</sup> Letter from Koskie Minsky dated February 18, 2016.

<sup>2</sup> Ms. Juneja has prepared a report dated October 19, 2016 (the "**Juneja Report**") which is appended as Exhibit A to the Juneja Affidavit.

<sup>3</sup> Collectively, the "**Respondent Affidavits**".



5. Among other things, the Juneja Report addresses three questions posed by Hydro One's counsel regarding my proposed framework:
- a. *"Does the 'aggregate level' approach that Mr. Soriano proposes constitute a reasonable methodology for calculating alleged class-wide damages on an aggregate basis for all Hydro One customers (the "Aggregate Assessment Issue")?"*<sup>4</sup>
  - b. *"Would a sampling approach, as proposed by Mr. Soriano, be a reasonable methodology for calculating alleged class-wide damages on an aggregate basis for all Hydro One customers (the "Sampling Issue")?"*<sup>5</sup>
  - c. *"What does your analysis of a sample of customer accounts reveal about the individual issues involved in Mr. Soriano's suggested [sampling] approach ...(the "Individual Issues")?"*<sup>6</sup>

### My Summary Comments

6. I note:
- a. My proposed methodology to calculate damages on an aggregate basis remains valid.
  - b. The Respondent Affidavits do not address my assumptions listed at paragraph 22 of the First Soriano Report. I have therefore prepared this response on the basis that:
    - i. Hydro One's legacy and SAP billing systems store each customer's classification (reflecting Hydro One's business rules);
    - ii. Hydro One's legacy and SAP billing systems separately store consumption data for each customer (i.e. before the consumption data is migrated into Hydro One's billing system); and
    - iii. IT experts can build a model that replicates Hydro One's business logic used to determine amounts owing by individual customers.
  - c. Dr. Juneja has misinterpreted the mechanics of my proposed framework. I address this issue beginning at **paragraph 7**, below.

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<sup>4</sup> Paragraph 4c.

<sup>5</sup> Paragraph 4d.

<sup>6</sup> Paragraph 4e.

- d. Dr. Juneja and I agree that to the extent statistical sampling is used in this process it would have to be properly controlled.<sup>7</sup>
- e. Beginning at paragraph 40 in the Juneja Report, Dr. Juneja describes various types of circumstances that require additional information or manual adjustments to a customer's bill. Dr. Juneja has not produced her analyses or findings from her review of 400 accounts (5,000 customer bills). She has provided anecdotal and non-specific observations about case-specific circumstances she apparently encountered during her review (without details). Given the lack of specificity, I am not in a position to comment on Dr. Juneja's findings on this point but would be pleased to do so if I am afforded the opportunity to review her analysis and findings.

## My Comments

### The Aggregate Assessment Issue

7. Dr. Juneja states that my "...'*aggregate level*' approach is unworkable as it fails to consider aspects of the bill calculation that rely on individual characteristics such as usage threshold, specific consumption pattern [sic] and their interaction."<sup>8</sup>
8. Dr. Juneja states that "[w]ithout additional clarification, however, it is not possible to address what Mr. Soriano envisions to be this '*aggregate level*' calculation and how such calculation would specifically be accomplished."<sup>9</sup>
9. Notwithstanding the pending clarification she requires, Dr. Juneja concludes that "...it is not accurate to use aggregate electric consumption to estimate aggregate charges."<sup>10</sup>
10. My principal comments are as follows:
  - a. In my proposed framework, the financial loss, if any, is calculated as the difference between the Proper Amounts and the Invoiced Amounts.<sup>11</sup> The Proper Amounts "...are the amounts the defendants should have charged according to stipulated rates and actual consumption."<sup>12</sup>

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<sup>7</sup> Juneja Report, paragraph 37.

<sup>8</sup> Paragraph 5.

<sup>9</sup> Paragraph 32.

<sup>10</sup> Paragraph 33.

<sup>11</sup> Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the First Soriano Report.

<sup>12</sup> First Soriano Report, paragraph 4.

- b. The Respondent Affidavits do not address the assumptions listed at **paragraph 6b** of the First Soriano Report which, taken together, answer many of the questions Dr. Juneja raises in her affidavit.
- c. Dr. Juneja does not specify what clarification she requires.
- d. Further to the preceding point, in proposing this framework, I propose that a model be constructed to calculate the Proper Amounts. I foresee a model *"...that replicates Hydro One's business logic used to determine amounts owing by individual customers."*<sup>13</sup> This model will:
- i. segregate the customers into categories based on the billing parameters that affect the amounts they are meant to be charged by Hydro One; and
  - ii. for each customer category, calculate the amount that Hydro One should have charged these customers based on a customer's individual consumption pattern.
- e. My proposed framework reflects the different billing criteria amongst the categories of class members. For example, one sub-category includes Residential Customers on a Tiered Pricing plan in an Urban Density region.<sup>14</sup> Of course this category may be further stratified to accommodate other billing parameters that affect how Hydro One charges that sub-group of customers. I reiterate that *"...other questions that may arise will be most efficiently dealt with through consultations with Hydro One representatives."*<sup>15</sup> However, I do not propose to assess the Proper Amounts on an individual by individual basis because I do not foresee a need for that level of granularity.
- f. At paragraph 34 of her affidavit, Dr. Juneja suggests that my approach will not address the following issues:
- i. for bills prior to 2016, customers received the "Ontario Clean Energy Benefit," a 10% credit on the first 3,000 kWh of usage;
  - ii. tiered customers were billed two different rates contingent on whether they exceeded a certain usage threshold; and

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<sup>13</sup> First Soriano Report, paragraph 22c.

<sup>14</sup> Hydro One has also produced a document titled *"Invoice Calculation Methodology"* that is appended as Exhibit 5 to the Juneja Report.

<sup>15</sup> First Soriano Report, paragraph 25b.

- iii. General demand rate type customers rely on an additional KW and KVA metered usage metric to calculate certain portions of their bill.

I confirm that my approach to calculate aggregate Proper Amounts for various categories of customers will account for each of these Individual Issues.

The Sampling Issue

11. Dr. Juneja states that “[w]ithout proper control, an extrapolation from a sample to the full class would subject the estimate to additional variation...”<sup>16</sup>
12. I agree. A statistical sampling protocol would have to be constructed and executed by a qualified statistician. Dr. Juneja does not suggest that there is any particular impediment to ensure “proper control.”

Yours very truly,



Errol D. Soriano  
Managing Director  
Duff & Phelps Canada Limited

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<sup>16</sup> Paragraph 37.

# **TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN :**

**BILL BENNETT**

Plaintiff

and

**HYDRO ONE INC., HYDRO ONE BRAMPTON NETWORKS INC.,  
HYDRO ONE REMOTE COMMUNITIES INC., NORFOLK POWER  
DISTRIBUTION INC. and HYDRO ONE NETWORKS INC.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**REPLY AFFIDAVIT OF BILL BENNETT  
(Sworn December 9, 2016)**

I, Bill Bennett, of the Town of Gravenhurst, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the plaintiff in the within action and as such have knowledge of the matters hereinafter deposed, except where stated to be on information and belief, in which case I disclose the source of my information. I believe these facts to be true.
2. I swear this affidavit in reply to the defendants' responding motion record and for no other or improper purpose.
3. No portion of this affidavit is meant to waive, nor should it be construed as a waiver of solicitor-client, litigation, or any other privilege.


4. Attached as exhibits "T" and "U" of the affidavit of Oded Hubert (the "**Hubert Affidavit**") are copies of Hydro One Networks' Distribution Customers Conditions of Service (Current) and Hydro One Networks' Distribution Customers Conditions of Service (May 21, 2013) (collectively, the "**Conditions of Service**").

5. Prior to reviewing the Hubert Affidavit, I had not seen copies of the Conditions of Service, nor do I recall receiving or reviewing a summary of the Conditions of Service provided by Hydro One or otherwise.

6. I have located copies of the Conditions of Service through searches performed on Hydro One's website. I have not located the Conditions of Service elsewhere, including through my online Hydro One account.

SWORN BEFORE ME at  
COLLIER COUNTY, FLORIDA  
 this 6 day of December, 2016.

  
 A Commissioner for taking Affidavits (or as may be)  
 FBN: 88647

  
 BILL BENNETT

# TAB 3



Court File No.: CV-15-535019-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN :

BILL BENNETT

Plaintiff

- and -

HYDRO ONE INC., HYDRO ONE BRAMPTON NETWORKS INC., HYDRO ONE  
REMOTE COMMUNITIES INC., NORFOLK POWER DISTRIBUTION INC., and  
HYDRO ONE NETWORKS INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**REPLY AFFIDAVIT OF RAJESH GURUSAMY**

I, Rajesh Gurusamy, of the City of London, in the Regional Municipality of Middlesex,  
MAKE OATH AND SAY:

1. I have been retained as an expert witness by the law firm of LAX O'SULLIVAN LISUS GOTTlieb LLP, co-counsel for the Plaintiff.
2. I have reviewed the affidavit of Oded Hubert, sworn October 19, 2016, which I understand was included in Hydro One's responding certification materials. I have been asked by counsel for the Plaintiff to prepare a report that gives my opinion on paragraph 29 of Mr. Hubert's affidavit. Attached to this affidavit and marked as Exhibit "A" is a copy of my letter, dated December 8, 2016.

3. I acknowledge and confirm that I continue to be bound by the Expert's Duty attached as Appendix "A" to my original reports, dated April 12, 2016 and April 13, 2016, included in the Plaintiff's Certification Motion Record.

SWORN BEFORE ME at the City of Toronto,  
this 12<sup>th</sup> day of January, 2017



Commissioner for Taking Affidavits  
*(or as may be)*

**Ian C. Matthews**



**RAJESH GURUSAMY**

This is Exhibit "A" referred to in the Reply Affidavit of Rajesh Gurusamy sworn January 12, 2017



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*Commissioner for Taking Affidavits (or as may be)*

**IAN C. MATTHEWS**

December 8, 2016

Ian C. Matthews  
Lax O'Sullivan Lissus Gottlieb LLP  
Suite 2750, 145 King Street West,  
Toronto, ON  
M5H 1J8 Canada

Dear Mr. Matthews:

**Re: Bennett v. Hydro One Inc. et al. (Court File No. CV-15-535019-00CP)**

As requested, I write to provide you with my opinion in reply to a claim in the Affidavit of Mr. Oded Hubert, sworn October 19, 2016. Specifically, paragraph 29 of the Hubert Affidavit states in part that:

*"Based on Hydro One Networks' information ... over 90% of Hydro One Networks' customers were completely unaffected by any of the billing issues that arose after the transition to the CIS ... and ... approximately 7% ... experienced one or more billing issues"*

In my opinion, this claim is unsubstantiated and open to doubt. I arrive at this opinion for three main reasons:

1. Complaint focus: Mr. Hubert is opaque about the source of his figures, and not at all forthcoming on how he gauges their reliability. He does not set out the methodology used for tracking customers that are "affected" by billing issues. I am concerned that he instead describes a reactive organization whose priorities and record-keeping seem to be primarily driven by customer complaints.
2. Lack of evidence: Section 8.2.5 of my April 13, 2016 report discusses the importance of parallel testing, which appears to have not been performed at all as part of Hydro One's CIS implementation project. Without having conducted parallel testing - or some other comprehensive accuracy checking process - on all, or at least a statistically significant sample of customer rate and usage data, there are no grounds for confidently claiming any percentage of customers were unaffected by the CIS implementation. It therefore remains possible that latent defects causing unnoticed and/or unreported billing errors could have occurred, which have not yet been detected and which may persist to this day, exposing all 1.3M Hydro One customers to a risk of being mischarged.
3. Conflict with external reports: Lastly, the 7% affected figure (roughly 91,000 customers) used by Mr. Hubert seems to be significantly lower than, and consequently at odds with, information reported about CIS-related billing issues in the public domain. One example can be found in the PWC report,<sup>1</sup> which states that in the first

<sup>1</sup> PwC. *Hydro One Customer Service and Billing Issues - Lessons Learned*. Rep. Toronto: PwC, 2014. PDF. p. 13.

30 days after transition alone, some 122,000 billing exceptions and "no bills" were reportedly triggered.

The opinions I arrive at in this report rely on the assumption that the information in the documents I have referenced is accurate.

The opinion in this report has been formulated based on my expert assessments of the material reviewed, which was informed by my extensive experience working on various SAP IS-U implementations and support assignments. As more material is produced in the course of this proposed class action, I reserve the right to modify or refine my opinion.

Sincerely,



Rajesh Gurusamy

BILL BENNETT  
Plaintiff

-and- HYDRO ONE INC. et al.  
Defendants

Court File No. CV-15-535019CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**REPLY CERTIFICATION RECORD  
(RETURNABLE MAY 9-11, 2017)**

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